

Award No. 10738

Docket No. DC-10399

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: That the Baltimore and Ohio Railroad Company disciplined Waiter Hughes McGill after notice of return to duty was granted on April 4, 1957.

We request that the Baltimore and Ohio Railroad Company be required to compensate Waiter Hughes E. McGill at his assigned rate of pay for the period of time between April 4, and April 11, 1957, inclusive, because of Carrier sending a notice to return to work to the wrong address.

OPINION OF BOARD: On April 4, 1957 Carrier addressed a letter to Claimant, a Waiter, to advise him that after investigation of a charge of rule violation it had decided to return him to duty with a reprimand. Either this letter, or another sent the following day, addressed to 363 instead of 362 McDonough Street, Brooklyn, New York, failed to reach Claimant. The former accordingly to Claimant, was returned to Carrier and re-mailed to 362 McDonough Street where it was received on April 11. Carrier stated that the former was never returned but that it re-mailed the second letter to Claimant's new address in Louisville, Kentucky. Carrier asserted that, in addition to written notice, Claimant's Supervisor attempted to call him by telephone on April 4 and for a week, to advise him to return to duty, but could not reach him. Claimant, on the other hand, asserted he contacted the Supervisor on April 9 but was advised that the latter had not been instructed to return Claimant to duty. Carrier denied this. In the meanwhile, Claimant moved to Louisville — "while I was off I had made plans to move, thus, I was not in New York when your misaddressed letter was mailed to me" — but he did not so advise Carrier until he wrote to it on April 23.

Employes maintained Claimant should be compensated at his assigned rate of pay for the period April 4 through 11 because, they asserted, Carrier sent notice to return to work to an incorrect address, and he therefore lost time he otherwise could have worked. It characterized the situation as one of discipline after notice of return to duty. Carrier maintained that it made more than adequate attempts to reach Claimant and that it complied with Article 13 of the Agreement between the parties effective March 16, 1948

which provided in part that "a decision shall be rendered within twenty (20) days after completion of investigation".

Article 13 does not require that notice of a decision must be given in writing or other specified manner. It was unquestioned that Claimant was supposed to return to duty on receipt of letter or by verbal communication from his supervisor. Carrier attempted to notify Claimant promptly and was unsuccessful initially because Claimant was not available. It was not shown that a written notice failed to reach Claimant because of misdirection rather than because of his change of residence to a new city, nor that Claimant was disciplined in any manner on or after April 4, 1957. The Board concludes that the claim should be denied.

In their notice of intention to file Ex Parte Submission, Employes also requested that the reprimand placed on Claimant's record be deleted. However, they did not subsequently include this in their actual Statement of Claim. The Board accordingly has not considered this feature.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.